

STATE BOARD OF EQUALIZATION

450 N STREET, SACRAMENTO, CALIFORNIA
(PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
TELEPHONE (916) 445-5580
FAX (916) 323-3387



630.0024

FROM: LINDA L. HAYWARD

DEAN F. ANDAL
Second District, Stockton

ERNEST J. DRONENBURG, JR.
Third District, San Diego

KATHLEEN CONNELL
Controller, Sacramento

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Acting Member
Fourth District, Los Angeles

E. L. SORENSEN, JR.
Executive Director

December 30, 1998

Hon. John Tuteur
Napa County Assessor
1127 First Street, Room 128
Napa, CA 94559-2931



Re: Interpretation of Revenue and Taxation Code section 271, subdivisions (a) and (c).

Dear Mr Tuteur:

This is in reply to your letter of October 20, 1998 addressed to Assistant Chief Counsel Larry Augusta in which you request a legal opinion as to the proper interpretation of provisions of Revenue and Taxation Code section 271 as applied to two specific factual scenarios. Though you refer to section 271 as the relevant statutory authority, please note that section 271 has no application to either of the situations described because that section applies only to organizations not in existence on the lien date or which acquire property after the lien date. As set forth below, I have restated and analyzed your specific questions in terms of the appropriate code sections.

1. An organization with a timely filed exemption claim for that assessment year files its Business Property Statement after the deadline set by section 463. The value of the organization's tangible personal property is \$3,000,000.

Question 1. Should the assessor calculate the 10% penalty required under Section 463 and add it to the assessment, i.e. \$3,000,000 plus \$300,000?

Question 2. If the answer to Question 1 is yes, should the entire \$3,300,000 of tangible personal property then be exempted?

Response

Section 463 provides in relevant part that

If any person who is required by law or is requested by the assessor to make an annual property statement fails to file it with the assessor by 5 p.m. on the last Friday in May, or if, after written request by the assessor, any person fails to file an annual property statement within the time limit specified by Section 441 or make and subscribe the affidavit respecting his name and place of residence, a penalty of 10 percent of the assessed value of the unreported taxable tangible property of such person placed on the current roll shall be added to the assessment made on the current roll.

Based on long-standing board staff view that penalties should be imposed only to the extent that a taxpayer's action has caused some amount of tax not to accrue to the taxing jurisdiction, it has been our opinion that an assessment should be reduced by the allowable amount of the exemption prior to computation of the 10% penalty. Thus, if the subtraction of the exemption from the gross assessed value is zero then no penalty would be applicable. However, if the assessed value of the property exceeds the amount of the exemption then the 10% penalty would be assessed on the value of that property for which an exemption is not available.

Example No. 2 - An organization fails to file its exemption claim timely. The same organization also fails to file its Business Property Statement timely pursuant to Section 463. The organization then files its exemption claim late but prior to the next lien date.

Question 1 - Assuming the Assessor should calculate the 463 penalty and add it to the tangible personal property assessment, will that penalty of approximately \$3,000 ($\$300,000 \times .01$ tax rate) be subject to the \$250 limitation spelled out in section 270?

Response

As explained in the answer to Example 1, the 10% penalty will be assessed only on that portion of the assessed value of the property which is not exempted, if any. For late filed claims for exemption, Section 270, subdivisions (a) and (b) provide that

(a) With respect to property as to which the college, cemetery, church, religious, exhibition, veterans' organization, free public libraries, free museums, public schools, community colleges, state colleges, state universities or welfare exemption was available but for which a timely application for exemption was not filed:

(1) Ninety percent of any tax or penalty or interest thereon shall be canceled or refunded provided an appropriate application for exemption is filed on or before the lien date in the calendar year next succeeding the calendar year in which the exemption was not claimed by a timely application.

(2) If the application is filed after the date specified in paragraph (1), 85 percent of any tax or penalty or interest thereon shall be canceled or refunded provided an appropriate application for exemption is filed and relief is not authorized under Section 214.01 or 271.

(b) Notwithstanding the provisions of subdivision (a), any tax or penalty or interest thereon exceeding two hundred fifty dollars (\$250) in total amount shall be canceled or refunded provided it is imposed upon property entitled to relief under subdivision (a) for which an appropriate claim for exemption has been filed.

Provided that the organization qualifies for one of the enumerated exemptions and files the exemption claim according to the provisions of subdivision (a)(1) and (a)(2), then pursuant to subdivision (b) \$250 is the maximum liability in tax, interest and penalty that the organization will incur. For example, if subdivision (a)(1) applies, resulting in an exemption of 90% of the \$3,000,000 value of the property or \$2,700,000, then \$300,000 in assessed value would not be exempted. The tax on that amount would be \$3,000 and the 10% penalty would be \$300. However, pursuant to subdivision (b), the \$250 maximum would apply.

The views expressed in this letter are only advisory in nature; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Very Truly Yours,



Louis Ambrose
Tax Counsel

LAA:jd

<http://property/proceednt/gencorresp/1998/98020.1oa>

cc: Mr. Dick Johnson, MIC:63
Mr. David Gau, MIC:64
Ms. Jennifer Willis, MIC:70

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PROPERTY TAXES